

Criminal Code

the jury that the man who was not wholly or chiefly to blame was not necessarily guilty of seduction, and the jury would act accordingly.

If we in parliament feel that a man is guilty of seduction of a girl between the ages of 16 and 18 even though he may not be wholly to blame, then I think we should put that provision in. If of course we decide that in the case of a girl from 16 to 18 the element of tender years enters in and therefore he would not be guilty or not wholly to blame provided other elements were present, we leave it out. We have to make up our minds what we think should be present in order to constitute the offence of seduction, and whether partial absolution from blame should or should not be a consideration in the minds of a jury in reaching their verdict. If we think it should, then I believe we should put in a saving clause. Personally I think we should put it in.

Mr. Barnett: I was listening to this discussion from the point of view of my learned friends although I am not in that category in any sense of the word. It does appear to me that under the ordinary usage of language the word "seduction" means that a person is wholly or chiefly to blame, and that is the offence which is set forth in this section. Unless the blame is proved, there is no offence. With the saving clause in 131 I feel that the accused is adequately protected in the situation that is described.

Mr. Montgomery: I think we should decide what we are trying to do. A minute ago an hon. member brought up this point. If you are a judge holding court, what must the prosecution prove in order to make out a case? Where the male accused is 18 years of age or over—that is point one—and seduces a female of previous chaste character between the ages of 16 and 18 years, the jury could bring in a verdict of guilty when they were satisfied that those elements had been proved. Has the court any other alternative than to find the accused guilty?

Mr. Fulton: Has the jury any other alternative?

Mr. Montgomery: I am thinking of the court as the judge and the jury. Have they any other alternative?

Mr. Garson: Having regard to the fact that the essence of seduction is persuasion by the accused of the female person to have sexual intercourse with him, and that if she is willing to have it without persuasion he is not guilty, will my hon. friend tell us that in a case in which the evidence showed that

[Mr. Fulton.]

the accused was not wholly or chiefly to blame there would be any likelihood of the jury finding him guilty of seduction?

At six o'clock the committee took recess.

AFTER RECESS

The committee resumed at eight o'clock.

The Deputy Chairman: Clause 143.

Mr. Fulton: Mr. Chairman, I do not want to delay the committee unduly, nor indeed to depart from the principle on which we agreed when we first started consideration of this matter, which was to the effect that if any section was controversial we would ask to have it stand. However, I want to make one more effort to try to persuade the minister and the committee that there is validity in the point I am making in connection with clause 143, and that the provision regarding the equality of blame should be maintained in this section as it has been in clauses 138 and 145.

I am not going to rehearse all the arguments we went over before dinner regarding the necessity of retaining that provision on its merits, but I want to put this point to the minister now. He has said it is felt that it is not necessary to retain this provision because one of the elements of seduction is persuasion, and therefore it is advanced as a defence to a charge of seduction that the informant or seducee, if that is the right word, was partly to blame, having led the accused on, and therefore the jury would not convict the accused.

I want to put this before him, that at the present time there are three sections of the Criminal Code in which it is specifically provided that the judge may direct the jury that if they feel the accused was not wholly or chiefly to blame, then the jury may bring in an acquittal. But what happens if you take that provision out of the section dealing with seduction between the ages of 16 and 18? It is left in with respect to the girl under 14. It is left in with respect to a ward, foster child or employee; and I believe a judge could very properly tell a jury that parliament had decided, in regard to the question of the guilt or innocence of an accused on a charge of seduction, that it is no longer to be up to them to consider whether the seducee had been co-operative, or whether the seducee, informant or accusant was in any way responsible, or whether any element of blame attached to her, because parliament has taken that out of this section.